

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAWRENCE J. MANN and PHILLIP M. WINTER

MAILED

AUG 12 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2005-1562
Application No. 09/833,942

ON BRIEF

Before KIMLIN, WALTZ and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 23-26, 28-33, 35-37, and 48.

Claim 23 is illustrative:

23. A cleaning article comprising:

a foam pad having a first major surface;

a plurality of rubber particles having a Shore A hardness less than 80; and

binder on at least a portion of the first major surface, the binder having a T_g in the range of 0°C to -70°C and binding the rubber particles, at least in part, to the first major surface, wherein said binder comprises at least one of nitrile rubber, styrene-butadiene rubber, or polyisoprene.

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The examiner relies upon the following references
as evidence of obviousness:

| | | |
|--------------------|-----------|--|
| Lise et al. (Lise) | 6,640,504 | Jun. 18, 2002 (filed Mar. 28, 2000) |
| Yamato | 6,528,154 | Mar. 04, 2003 (filed Jul. 12, 1996) |

Appellants' claimed invention is directed to a cleaning article comprising a foam pad having on its major surface a plurality of rubber particles embedded in a binder. The binder comprises at least one of nitrile rubber, styrene-butadiene rubber, or polyisoprene. According to appellants, "[t]he present invention can be used, for example, to clean embedded soil on low gloss paint coatings without significantly increasing the gloss and on high gloss paint coatings without significantly scratching or reducing the gloss" (page 6 of principal brief, first paragraph).

Appealed claims 23-26, 28, 29, 31-33, 35, 36, and 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Yamato in view of Lise. Claims 30 and 37 stand separately rejected under 35 U.S.C. 103(a) as being unpatentable over the same combination of references.

Appellants have not separately grouped the appealed claims nor presented an argument that is reasonably specific to any

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claim on appeal. Accordingly, all the appealed claims stand or fall together with claim 23.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer.

Appellants do not dispute the examiner's factual determination that Yamato, like appellants, discloses an article comprising a foam pad having a binder layer on its major surface into which is embedded a plurality of rubber particles. Yamato does not specify the particular binder/adhesive that is used to bind the rubber particles to the foam substrate, thereby leaving it to one of ordinary skill in the art to select an appropriate adhesive binder. Since Lise discloses the presently claimed nitrile and butadiene rubbers as suitable binders for adhering thermosetting and thermoplastic abrasive to a foam substrate, we fully concur with the examiner that one of ordinary skill in the art would have found it obvious to select such nitrile and butadiene rubbers as the adhesive binder in the article of Yamato.

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Once the obvious selection of an adhesive binder is made in forming the article of Yamato, we agree with the examiner that the preambular claim language "cleaning article" does not serve to distinguish the claimed article from the article of Yamato. As explained by the examiner, the appealed claims fail to recite any structure for the article that is different than the structure of Yamato's article once the appropriate, obvious adhesive binder is selected. Also, it must be borne in mind that the article of Yamato can be used as a cleaning article before applying a liquid type cosmetic. Accordingly, we find appellants' arguments, based on the improper combination of non-analogous art, non-persuasive inasmuch as the examiner does not propose a modification of Yamato but, rather, an interpretation of the reference as would have been understood by one of ordinary skill in the art.

Moreover, since Lise discloses an abrasive cleaning article comprising thermosetting or thermoplastic abrasive polymers adhered to the claimed binders on a foam substrate, it is our view that it would have been obvious for one of ordinary skill in the art to select the claimed rubber particles as the polymer particles of Lise. (See column 9, lines 14-46).

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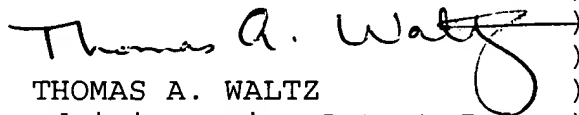
As a final point, we note that appellants base no arguments upon objective evidence of nonobviousness, such as unexpected results, attributed to the use of the claimed binder. Indeed, appellants' specification states that "[s]uitable binders should be apparent to those skilled in the art" (page 10 of specification, third paragraph).

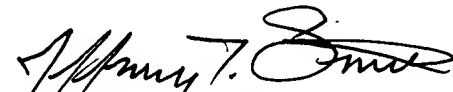
In conclusion, based on the foregoing, the examiner's rejections of the appealed claims are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED


EDWARD C. KIMLIN)
Administrative Patent Judge)


THOMAS A. WALTZ)
Administrative Patent Judge)


JEFFREY T. SMITH)
Administrative Patent Judge)

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